

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of

Application by Qwest Communications  
International, Inc. for Provision of In-Region,  
InterLATA Services in Colorado, Idaho, Iowa,  
Montana, Nebraska, North Dakota, Utah,  
Washington and Wyoming

WC DOCKET NO. 02-314

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**SUPPLEMENTAL COMMENTS  
OF THE  
NORTH DAKOTA PUBLIC SERVICE COMMISSION**

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October 15, 2002

Susan E. Wefald, President  
Leo M. Reinbold, Commissioner  
Anthony T. Clark, Commissioner

North Dakota Public Service Commission  
600 East Boulevard  
Bismarck, ND 58505  
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## **SUPPLEMENTAL COMMENTS**

On July 1, 2002, the North Dakota Public Service Commission (NDPSC) filed its initial comments in this proceeding supporting the Application by Qwest Corporation International, Inc. (Qwest) for authorization under Section 271 of the Communications Act to provide in-region, interLATA service in North Dakota. The NDPSC reaffirms its support of Qwest's original application in WC Docket No. 02-148, and incorporates by reference its comments in WC Docket No. 02-148.

On August 28, 2002, the NDPSC filed comments on the *ex parte* letter filed by Qwest with the Federal Communications Commission (FCC) regarding the filing of negotiated agreements between Qwest and competitive local exchange carriers. The NDPSC advised the FCC that it had rejected the motion of AT&T Corporations of the Midwest, Inc. (AT&T) to reopen the public interest portion of its hearings, and found that the record did not warrant a denial recommendation on Qwest's section 271 application. On October 10, 2002, the NDPSC approved the late filed interconnection agreements filed by Qwest relating to this matter

On August 19, 2002, Qwest filed a request for acceptance of PO-20 performance measurement and payment scheme for inclusion in the Qwest Performance Assurance Plan (QPAP). Qwest stated in its request that it had agreed, in an *ex parte* communication with the FCC, to request that the NDPSC accept the proposed PO-20 for inclusion in the QPAP. The NDPSC requested comments on the filing from interested parties. AT&T and WorldCom, Inc. filed comments in opposition to Qwest's request. The NDPSC has a work session scheduled for October 21, 2002 to discuss this matter and will make a determination in due course.

On September 10, 2002, Qwest announced the withdrawal of its pending application in WC Docket No. 02-148. On September 19, 2002, AT&T filed a motion to reopen the record and require Qwest to supplement the record with sufficient evidence to demonstrate that Qwest and its new section 272 affiliate are in compliance with section 272 of the Telecommunications Act of 1996. On October 10, 2002, the NDPSC denied AT&T's request to require Qwest to supplement the record. The NDPSC found that under the plain language of section 271(d)(2)(B), the NDPSC's consultative requirement is limited to the 14-point competitive checklist and the Track A and B requirements.

## **PUBLIC SERVICE COMMISSION**

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**Anthony T. Clark**  
Commissioner

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**Susan E. Wefald**  
President

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**Leo M. Reinbold**  
Commissioner

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**CONCURRING OPINION**  
**Commissioner Susan E. Wefald**

**October 15, 2002**

I concur with the order issued today on the Supplemental Comments of the North Dakota Public Service Commission. However, I do not agree with the sentence which states "The NDPSC found that under the plain language of section 271(d)(2)(B), we find that the NDPSC's consultative requirement is limited to the 14 point competitive checklist and the Track A and B requirements." Although I voted for this order, it included a concurring opinion in which I discussed this sentence.

In the Consultative Report of the North Dakota Public Service Commission, dated July 1, 2002, the Commission devoted 16 pages of its comments to Section 272 Separate Affiliate. This was an important part of our report to the Federal Communications Commission. (FCC) These issues are still important as they involve the new company established by Qwest to handle its interstate long distance.

However, Qwest filed its new 271 application with the FCC on September 30 and the FCC gave the states 15 days to file comments. Therefore, the main reason we cannot file comments on Section 272, Separate Affiliate issues is due to lack of time.

There is one additional matter that I would like to mention as we submit this new consultative report to the FCC. Since our legislature meets only once every two years, the North Dakota Legislature has not yet passed legislation that will set up the funding the NDPSC needs to monitor Qwest's performance in the future to prevent backsliding and to ensure that the doors to competition remain open. This issue will need to be addressed by the 2003 legislative session.